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Attorneys for Defendant
Kan Pacific Saipan, Ltd.
dba Mariana Resort and Spa

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

KOUICHI TANIGUCHI,) CIVIL CASE NO. 08-0000⁸
vs.)
Plaintiff,) MEMORANDUM IN REPLY TO
vs.) PLAINTIFF'S "RESPONSE" TO MOTION TO
Defendant.) COMPEL
vs.)
KAN PACIFIC SAIPAN, LTD. dba) Time: 9:00 a.m.
Mariana Resort and Spa,) Date: August 28, 2008
vs.) Judge: Munson
Defendant.)
vs.)

In the second sentence of Plaintiff's Response to Defendant's Motion to Compel Production of Documents, he writes that "Plaintiff has now served his response by email attachment to counsel for Defendant". If Plaintiff refers to the "written response" called for by FRCP 34(b), this is untrue. Defendants have received no such written response to the Request for Production, whether by

email attachment, regular mail, facsimile, or by hand delivery. And no responsive documents have been served, either.

Plaintiff next writes that the “reason for the lack of timely response is due to communication and translation difficulties with plaintiff who is a citizen of Japan, resides in Japan and speaks and reads very little English”. This is somewhat difficult to believe. As noted in one of the emails attached to the Roberts Declaration filed with the Motion to Compel, Defendant first requested the documents more than a year before serving the Request for Production in April of this year. And it has now been more than three (3) months since the Request for Production was served. It cannot be that difficult to translate “tax returns”, “pay records”, and the like. Moreover, not a single document has been produced. It seems apparent that Plaintiff’s counsel has yet to receive any of the requested documents from his client, almost two (2) years after the accident that is the subject of the lawsuit.

Plaintiff finally writes that “(a)ll documents must be translated English/Japanese and Japanese/English. Regrettably, this has taken more time than originally anticipated.” Translated documents responsive to the Request for Production would be appreciated, but that is not what the Federal Rules require, and that is not what Defendant requested. Defendant wants the documents themselves, whether in Japanese, English or some other language. As mentioned above, for whatever reason it appears that Mr. Taniguchi is simply refusing to produce any records at all in response to the Request for Production.

For the foregoing reasons, the Motion to Compel should be granted and Defendant should be awarded its attorney fees and costs incurred in connection with the motion. In fact, since Plaintiff has not even opposed the motion, but merely “responded” to it, there is really even no need for a hearing on the motion to compel. Because of this, and because Plaintiff’s conduct has put the current scheduling order in jeopardy, the Court may wish, instead, to simply enter an order

compelling all requested documents to be delivered to Defendant's counsel by a date certain, say, by Tuesday, August 5, 2008, which would be three (3) weeks and two (2) days before the currently-scheduled August 28, 2008 hearing on the Motion to Compel. If all of the requested documents are not delivered by that date, within two (2) days thereafter, Defendant would file a Motion to Dismiss the case under FRCP 37(d) and 37(b)(2)(C). In this regard, perhaps the Court's Order compelling discovery could also allow for the currently-scheduled August 28, 2008 hearing on the motion to compel to be converted into a hearing on that Motion to Dismiss.

Dated this July 22, 2008.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: July 22 2008

By:



TIM ROBERTS, ESQ.

Attorneys for Defendant Kan Pacific Saipan,
Ltd. dba Mariana Resort and Spa

Date: 7/22/08

By:



RICHARD PIERCE, ESQ.

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